

POLLUTION—UNDERGROUND WATER—PREVENTION

CHAPTER 458⁴

H. B. No. 409

An Act to provide for the prevention of pollution of underground water by registering water well drillers and providing for administration and enforcement; and declaring an emergency.

Be it enacted by the Legislature of the State of Texas:

Definitions

Section 1. The following words and phrases as used in this Act shall have the following meanings unless a different meaning clearly appears from the context. The singular form shall also mean the plural form. The masculine gender shall also mean the feminine and neuter genders.

(a) "Person" shall mean any person, firm, partnership, association, corporation, or any other group or combination acting as a unit.

(b) "Board" shall mean the State Board of Water Engineers, or its successor.

(c) "Water Well" shall mean any artificial excavation constructed for the purpose of producing ground water. The term, however, shall not include any hand-dug or drive point water well or test or blast holes in quarries or mines, or any well or excavation for the purpose of exploring for, or producing oil, gas, or any other mineral.

(d) "Water Well Driller" shall mean any person who engages for compensation in the drilling, boring, coring, or construction of any water well in this State. The term, however, shall not include any person who drills, bores, cores, or constructs a water well on his own property or for his own use.

(e) "Registered Water Well Driller" shall mean any person who holds a certificate from the State Board of Water Engineers as a Registered Water Well Driller.

(f) "Pollution" shall mean an impairment of the physical, chemical or biological properties of water by the acts or instrumentalities of man to a degree which results in a material and adverse effect upon any consumptive or beneficial use of such waters.

(g) "Well Log" shall mean a log accurately kept at the time of drilling of the depth, thickness and character of the different strata penetrated and location of water-bearing strata together with other data required on forms prescribed by the Board.

(h) "Water Well Drillers Board" shall mean an advisory board consisting of seven (7) members appointed by the State Board of Water Engineers as hereinafter provided.

Registration Required

Sec. 2. (a) It shall be unlawful for any person to drill, bore, core, or construct any water well in this State for compensation, without first registering with the State Board of Water Engineers and securing a certificate of registration as a registered water well driller.

(b) Application for a certificate of registration shall be in writing and in the form prescribed by the Board. The application shall give the busi-

4. Vernon's Ann.Civ.St. art. 7621c.

ness residence and permanent mailing address of the applicant and shall contain such further relevant information as the Board may require.

(c) At the time of making application, each applicant shall pay to the Board the sum of Twenty-five Dollars (\$25) as a registration fee.

(d) All certificates of registration issued under this Act shall expire on August 31st of each year, and on or before that date, each person holding a certificate of registration shall pay to the Board the sum of Twenty-five Dollars (\$25) as an annual registration renewal fee.

(e) A certificate of registration shall not be transferable or assignable.

(f) A certificate of registration to replace a certificate, lost, destroyed or mutilated shall be issued by the Board upon the payment of a fee of One Dollar (\$1).

(g) Any person actively engaged in business in this State as a water well driller on the effective date of this Act shall be entitled to a certificate of registration upon the filing of an application and the payment of a registration fee as provided herein.

Reciprocity

Sec. 3. The Board, upon application therefor and the payment of a fee of Twenty-five Dollars (\$25), may issue a certificate of registration as a Registered Water Well Driller to any person who holds a certificate of qualification or registration issued to him by proper authority of any state or territory or possession of the United States, or of any country, if the registration for the requirement of Registered Water Well Driller under which said certificate of registration was issued does not conflict with the provisions of this Act and is of a standard not lower than that specified by the provisions of this Act, and if that particular state, territory or possession of the United States, or country, extends similar privileges to the persons registered under the provisions of this Act.

Reporting of Well Logs

Sec. 4. (a) Every registered water well driller drilling, deepening or taking logs of a water well within this State, shall make and keep, or cause to be made and kept, a legible and accurate water well log thereof, and within sixty (60) days from the completion or cessation of drilling, deepening or logging of such water well, deliver or transmit by certified mail to the Board, on forms prescribed by the Board, a sworn copy of such water well log.

Rules and Regulations

Sec. 5. The Board of Water Well Drillers shall constitute an Advisory Committee to the Board. This Advisory Committee shall furnish such information, assistance, and advice as the Board shall request. Provided however, this Act shall not be inconsistent with the Constitution and Laws of this State or with the rules and regulations of any underground water conservation districts that have been or may hereafter be duly created under Article 7880-3(c), Revised Civil Statutes of Texas, as amended, or the Acts of the Fifty-third Legislature of Texas, page 17, Chapter 10.

Water Well Drillers Board

Sec. 6. The Board of Water Engineers shall appoint the seven-member Water Well Drillers Board as follows, to wit:

(a) One (1) member of the Board of Water Engineers to be selected by its Chairman.

(b) One (1) member from the State Department of Health to be selected by the Commissioner of Health.

(c) Five (5) registered water well drillers under the following conditions, to wit:

(1) Each such driller to have a minimum of ten (10) years experience in water well drilling prior to his appointment.

(2) Each such driller to be a citizen of the State of Texas.

(3) One (1) of each such drillers shall be selected from the following geographic areas of the State of Texas:

- A. Gulf Coast Area.
- B. Trans-Pecos Area.
- C. Central Texas Area.
- D. North-East Texas Area.
- E. Panhandle-South Plains Area.

(d) The Board shall not appoint to the Water Well Drillers Board more than one (1) person who is employed by, or owns an interest in, a company or business association which is engaged in any phase of the water well drilling business.

(e) The five (5) water well driller members herein provided shall be appointed for the following terms: The initial appointments of two (2) members shall expire September 15, 1963. The initial appointments of two (2) other members shall expire September 15, 1965. The initial appointment of the remaining one (1) member shall expire September 15, 1967. All regular appointments shall be for terms of six (6) years. The terms of members shall begin on September 16th of odd-numbered years. The initial appointments of the five (5) members shall be made immediately following the effective date of this Act.

(f) Members of the Water Well Drillers Board shall serve without additional compensation but may receive from the State Agencies they serve traveling expenses as otherwise provided by law.

Revocation of Certificates of Registration

Sec. 7. The certificate of registration of any registered water well driller who violates any provision of this Act or any rule or regulation promulgated by the Board under the authority of this Act may be revoked by the Board.

The provisions requiring a license for a water well driller under the terms of this Act may be suspended in "drought disaster areas," when declared such by the County Commissioners Court of each county concerned and by proclamation of the Governor of Texas.

Appeal

Sec. 8. Any person whose certificate of registration is revoked by the Board shall have the right to file suit in the District Court of the county of his residence against the Board, as defendant, to set aside the order revoking such certificate of registration. The suit shall be tried de novo as such term is commonly used in an appeal from justice court to the county court, and the substantial evidence rule shall have no application in such appeal.

In all appeals prosecuted in any of the courts of this State pursuant to the provisions of this Act, such trials shall be de novo as that term is used and understood in appeals from justice of the peace courts to county courts. When such an appeal is filed and the court thereby acquires jurisdiction, all administrative or executive action taken prior thereto shall be null and void and of no force and effect, and the rights of the parties thereto shall be determined by the court upon a trial of the matters in controversy under rules governing the trial of other civil suits in the same manner and to the same extent as though the matter had been committed

to the courts in the first instance and there had been no intervening administrative or executive action or decision. Under no circumstances shall the substantial evidence rule as interpreted and applied by the courts of Texas in other cases ever be used or applied to appeals prosecuted under the provisions of this Act. The Legislature hereby specifically declares that the provisions of this Section shall not be severable from the balance of this Act, and further specifically declares that this Act would not have been passed without the inclusion of this Section.

Disposition of Revenues

Sec. 9. All money derived by the Board under the provisions of this Act shall be placed in the General Revenue Fund.

Penalty

Sec. 10. Any person not holding a certificate of registration as a registered water well driller who drills, bores, cores or constructs any water well in this State for compensation shall be guilty of a misdemeanor and upon conviction shall be subject to a fine of not less than Twenty-five Dollars (\$25) nor more than Two Hundred Dollars (\$200) or by confinement in the county jail for a period not to exceed one hundred and twenty (120) days, or by both such fine and imprisonment, and each day's violation shall constitute a separate offense.

Construction

Sec. 11. Nothing in this Act shall be construed as affecting the ownership, or the rights of the owner of the land, in underground water.

Severability Clause

Sec. 12. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications to the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

Cumulative Clause

Sec. 13. This Act shall be cumulative of all laws or parts of laws relating to this subject.

Emergency Clause

Sec. 14. The fact that the laws of this State do not adequately provide for the gathering of data and the prevention of pollution of underground water in this State creates an emergency and an imperative public necessity that the Constitutional Rule requiring bills to be read on three several days in each House be suspended, and this Rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Passed the House, April 19, 1961, by a non-record vote; House concurred in Senate amendments, May 27, 1961, by a non-record vote; passed the Senate, as amended, May 26, 1961, by a viva-voce vote.

Approved June 17, 1961.

Effective 90 days after May 29, 1961, date of adjournment.